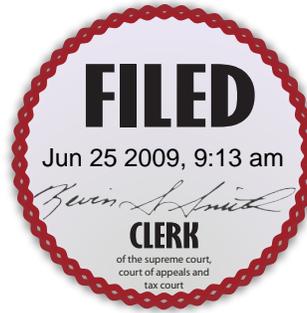


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE:

ATTORNEY FOR APPELLEE:

CHARLES J. RATHBURN, JR.
Atlanta, Georgia

CYNTHIA A. HOGAN
Fort Wayne, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

CHARLES J. RATHBURN, JR.,)

Appellant-Respondent,)

vs.)

No. 02A03-0807-CV-383

CHRISTINE A. RATHBURN,)

Appellee-Petition.)

APPEAL FROM THE ALLEN CIRCUIT COURT

The Honorable Thomas J. Felts, Judge
The Honorable Craig J. Bobay, Magistrate
Cause No. 02C01-0304-DR-315

June 25, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent Charles J. Rathburn, Jr., appeals a number of the trial court's rulings and the decree of dissolution of marriage to appellee-petitioner Christine A. Rathburn. Charles argues that the trial court erred by (1) finding him in contempt for failure to pay child support; (2) reversing course on an ordered custodial home study; (3) discharging the children's guardian ad litem; (4) setting the case for trial three weeks after the pretrial conference and limiting the parties to thirty minutes per side at trial; (5) valuing and dividing the marital estate; and (5) failing to reimburse Charles for alleged expenses he incurred on the children's behalf. Finding no error, we affirm.

FACTS

Charles and Christine were married on January 4, 1994. There were two children born of the marriage—a son born in 1995 (Son) and a daughter born in 1998 (Daughter). On April 10, 2003, Christine filed a petition to dissolve the marriage. The parties entered into an agreed entry on May 14, 2003, pursuant to which Charles was to pay weekly child support in the amount of \$188. At some point, the trial court appointed a guardian ad litem (GAL) for Son and Daughter.

On March 30, 2005, the trial court entered an order noting the parties' confusion regarding prior orders and agreements and observing that the confusion had "significantly increased the level of hostility and conflict" existing between Charles and Christine. Appellant's App. p. 20. The trial court completed a child support obligation worksheet and directed Charles to pay Christine child support in the amount of \$168 per week.

On December 21, 2005, following a hearing, the trial court entered a number of orders. Among other things, the trial court ordered Charles to pay weekly child support in the amount of \$85, retroactive to April 14, 2005. The court found that there was a child support arrearage owed by Charles in the amount of \$2,317.87 and ordered Charles to pay that amount no later than July 1, 2006. The trial court observed that the failure to pay child support “demonstrate[d Charles’s] disregard for the welfare of the children.” Id. at 35. Furthermore, the trial court found Charles in contempt of court for his willful failure to pay child support despite his ability to comply with the March 30 order. Additionally, the trial court dismissed the GAL from service.

Charles was an attorney licensed to practice in Indiana. In December 2006, he was suspended from the practice of law for eighteen months. In January 2007, he moved to Las Vegas, Nevada, and worked for attorneys in that state.

Over the ensuing months, there were multiple cross-motions for contempt filed by both parties. The trial court had ordered Charles and Christine to share the cost of a custodial evaluation. Charles paid his portion of the fee in a timely fashion but Christine did not do so. Charles filed a number of motions for contempt based on her failure. The trial court denied the motions and eventually, at some point before December 10, 2007, Christine had paid the required fees.

On December 10, 2007, the trial court held a hearing on all pending motions. Charles did not appear, though his counsel attended. The trial court issued a body attachment based on Charles’s child support arrearage in the amount of \$4,267.18. The trial court ordered the

parties to appear personally for a pretrial conference and further proceedings on February 7, 2008.

Charles failed to attend the February 7, 2008, pretrial conference, though his attorney was present. Following the conference, the trial court entered a pretrial order. Among other things, the trial court found as follows:

4. Contrary to the December 11, 2007 Order, [Charles] has failed to personally appear to inform the Court of what issues he is litigating.

6. The parties are Ordered to exchange names and addresses of all witnesses as well as copies of all exhibits at least ten (10) days prior to trial.

7. The parties are further Ordered to file with the Court: a marital balance sheet (including date of filing values); a proposed division of marital assets and liabilities; a Child Support Obligation Worksheet and Parenting Time Credit Worksheet; a certificate of completion of the Family Connections parenting program, and witness and exhibit lists. . . . These documents shall be filed at least five (5) days prior to trial.

14. The estimated length of trial is: 1 hour.
15. . . . The trial is set for . . . February 27, 2008 Each party will be allotted 30 minutes of the trial time.
16. Failure to comply with any aspect of this Pre-trial Order may result in the Court removing the case from the trial calendar and shall subject the non-complying party to sanctions. Failure to include a witness or exhibit on the submitted list may preclude the witness from testifying or the exhibit from being introduced.

Id. at 80-81. On February 22, 2008, Charles moved for a continuance of trial, stating that he was unable to prepare his case for trial and that it would “place [him] in a financial hardship.” Id. at 85. He also contended that the restriction of thirty minutes per side was onerous and would prevent him from fully litigating his case. The trial court denied the motion and proceeded with the trial as scheduled on February 27, 2008.

Following the trial, at which both parties and their attorneys appeared, the trial court entered a final dissolution decree. In pertinent part, the decree states as follows:

1. . . . [Charles], a former licensed attorney, has twice deliberately failed to appear at mandatory proceedings herein. . . . Father complained that the one (1) hour setting was not a sufficient amount of time. However, . . . neither party exhausted their thirty (30) minute per side allotment of time prior to resting their case.

- 4.2 [Charles] failed to present any evidence regarding how the best interests of the children would be served by awarding custody of the children to [Charles]. However, [Charles] presented some evidence that placement of the children with [Christine] was not in the best interests of the children.
- 4.3 [Charles] removed himself from the jurisdiction on or about January 1, 2007, moving to Las Vegas, Nevada. He filed a notice of Intent to Relocate to Nevada just three (3) days before he moved.
- 4.4 [Charles] recently relocated again, moving from Las Vegas, Nevada, to Atlanta, Georgia in January 2008. However, [Charles] failed to file a Notice of Relocation concerning this move . . .
- 4.5 [Charles’s] lack of residential stability (living in three (3) different states in three (3) different regions of the country in the last fifteen (15) months) is contrary to the best interests of the children.
- 4.6 At a contested hearing conducted on September 7, 2004, in the related Order for Protection cause, . . . the Court found [Charles] committed domestic violence or family violence upon [Christine],

and resultantly issued an Order for Protection to remove the threat of violence posed by [Charles's] conduct.

- 4.7. [Charles] testified that he lost his license to practice law in Indiana (18 month suspension) due to his professional negligence related to his mental illness of "depression." [Charles] has failed to accept responsibility for the professional negligence, but instead places the blame upon this court. No evidence was presented that [Charles's] mental condition has been treated. [Charles's] conduct at trial was not consistent with that of a well adjusted and mentally healthy individual.
- 4.8 The children have resided throughout the pendency of this protracted litigation with [Christine], and are adjusting well (at least academically) to living with [Christine].
- 4.9 As of trial, [Charles] has paid \$0.00 child support in 2008, and owes over \$5,000.00 in child support arrears. Such arrears is contrary to the best interests of the children, and demonstrates [Charles's] lack of regard for the well being of the children.
- 4.10 It is in the best interest of the parties' children that [Christine] shall have and retain custody of the children. Accordingly, [Christine] is awarded custody of the children.

- 6.4 Neither party submitted a Child Support Order Worksheet/Parenting Time Credit Worksheet, contrary to the Indiana Child Support Guidelines, Guideline 3, Commentary.

- 6.6 [Charles] shall pay [Christine] child support for the benefit of the children in the amount of \$134.00 per week effective February 29, 2008

- 6.9 The Court finds there is a support arrearage owed by [Charles] to [Christine] in the amount of \$5,274.43 as of February 28, 2008. The Court Orders [Charles] to pay \$16.00 per week toward this

arrearage. This is in addition to the regular/current support set forth and Ordered above.

6.11 [Charles] has yet to purge himself of Contempt, contrary to the Order of Contempt entered December 21, 2005.

Id. at 91-96. Charles now appeals.

DISCUSSION AND DECISION

I. Standard of Review

Here, the trial court entered specific findings of fact and conclusions of law thereon.

Therefore, we apply a well-established two-tiered standard of review:

we must first determine whether the evidence supports the findings and second, whether the findings support the judgment. The trial court's findings and conclusions will be set aside only if they are clearly erroneous, that is, if the record contains no facts or inferences supporting them. A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made. We neither reweigh the evidence or assess the credibility of witnesses, but consider only the evidence most favorable to the judgment.

Swadner v. Swadner, 897 N.E.2d 966,971 (Ind. Ct. App. 2008). Furthermore, our Supreme Court "has expressed a 'preference for granting latitude and deference to our trial judges in family law matters.'" Id. (quoting In re Marriage of Richardson, 622 N.E.2d 178, 178 (Ind. 1993)).

II. Failure to Pay Child Support

Charles argues that the trial court erroneously found him in contempt for his failure to pay child support and that the trial court also erred by finding that the arrearage demonstrated

Charles's disregard for the welfare of the children. Turning to the latter point first, the trial court's conclusion about Charles's disregard for his children's welfare had no legal impact on Charles—were we to “reverse” that finding, it would have no legal effect whatsoever on Charles or the outcome of these proceedings. In any event, we think it perfectly reasonable to infer that a parent who is able to pay child support but fails to do so demonstrates the parent's disregard for his or her children's welfare.

As for the contempt finding, whether a person is in contempt of a court order is a matter left to the trial court's discretion. Mitchell v. Mitchell, 785 N.E.2d 1194, 1198 (Ind. Ct. App. 2003). Willful disobedience of any lawfully entered court order of which the contemnor had notice is indirect contempt of court. Id. “Uncontradicted evidence that a party is aware of a court order and willfully disobeys it is sufficient to support a finding of contempt.” Evans v. Evans, 766 N.E.2d 1240, 1243 (Ind. Ct. App. 2002).

Here, it is undisputed that Charles was aware of all of the trial court's support orders. It is further undisputed that he had a substantial arrearage at the time the trial court entered the contempt finding—and that the arrearage has grown, rather than shrunk, since that time. He has never filed a motion seeking a change in the amount of his child support obligation nor has he presented any evidence apart from his own self-serving allegations supporting his claim that he is financially unable to pay the ordered amount. Therefore, we find that the trial court did not abuse its discretion by finding Charles in contempt of court.

III. Reversing Course on the Custodial Home Study

The trial court initially ordered the parties to undergo a custodial home study as part of the mediation process and stated that no trial date would be set until the evaluation occurred. The custodial home study never took place, however, and the trial court decided to set the matter for trial nonetheless. Charles argues that this decision was erroneous.

On November 13, 2007, Christine filed a “motion for relief of judgment,” stating that there had been certain changes since the trial court’s initial order that the parties undergo the home study. Appellee’s App. p. 231. Specifically, she informed the trial court that Charles had relocated to Nevada, that the children had resided with her since the action commenced, and Charles had not filed any motions for modification of custody. Moreover, Christine argued that Charles had “abandoned any belief that the children’s best interest would be served by conducting a custody evaluation when he now resides in another state and has abandoned his former relationship with the children.” Id. at 232. The trial court granted her motion and rescinded the order requiring the evaluation to take place.

We cannot say that the trial court abused its discretion, given that Charles neither raised a contemporaneous objection to the trial court’s motion nor raised the issue anew at the pretrial conference. Furthermore, Charles cannot establish prejudice as a result of the lack of a home study, given that he has shown no interest in having custody of the children. Even on appeal, he does not argue that the trial court’s decision to award custody to Christine was erroneous. Under these circumstances, we decline to find error on this basis.

IV. Discharging the GAL

Next, Charles argues that it was erroneous to discharge the children's GAL during the pendency of these proceedings when neither Charles nor Christine had requested that the GAL be discharged. Charles did not object to this action at the time it was taken by the trial court. Additionally, we note that the GAL was discharged in 2005, and at no time during the three years between that order and the trial did Charles request that a GAL be reappointed. Under these circumstances, we find that he has waived this argument. See Ind. Code § 31-15-6-4 (providing that a GAL "serves until the court enters an order for removal").

V. Mechanics of the Trial

Charles next argues that the trial court erred by setting the case for trial three weeks after the pretrial conference and by limiting the trial to thirty minutes per side. He appears to argue that he did not have sufficient time to call all of his witnesses or present his evidence.

Initially, we observe that Charles had several opportunities to present his arguments to the trial court but he failed to appear personally on at least two occasions—violating court orders in the process. Indeed, had he been present at the pretrial conference he could have made a far more compelling argument for a later trial date than that which was included in his motion for continuance that was filed weeks after the pretrial conference and only six days before trial was scheduled to begin. Additionally, he did not file a witness or exhibit list prior to trial and entered no exhibits into evidence at trial. Furthermore, he does not direct our attention to any rule requiring the trial court to hold a trial longer than one hour—and indeed, the trial court observed that at the trial, neither party exhausted its allotted thirty

minutes. Finally, we note that Charles did have the opportunity to present evidence and cross-examine witnesses at the trial. Under these circumstances, we find that the trial court neither abused its discretion nor denied Charles his due process rights by setting the case for trial three weeks after the pretrial conference or by limiting the trial to thirty minutes per side.

VI. Division of Assets

Next, Charles contends that the trial court improperly divided the marital estate without evidence related to the value of the assets. At trial, however, Christine presented evidence regarding her valuation of the assets and debts of the marital estate. Charles did not present any of his own evidence and may not now take a second bite of the apple. The trial court based its division on the evidence offered by Christine. Given that the trial court's valuation and division were within the scope of the evidence presented to it, we find no error in this regard.

VII. Charles's Expenses

Finally, Charles insists that the trial court failed to order Christine to reimburse him for medical, dental, optical, and work-related childcare expenses that he incurred on the children's behalf. There is no evidence in the record, however, that Charles has ever formally requested to be reimbursed for these expenses. And Charles presented no evidence regarding these alleged expenses at trial. His only evidence in support of his claim on appeal is his own self-serving affidavit that was executed on March 27, 2008, nearly a month after the trial court entered the final decree of dissolution. Under these circumstances, we do not

find that the trial court erred by failing to order that Charles be reimbursed for these alleged expenses.¹

The judgment of the trial court is affirmed.

MAY, J., and BARNES, J., concur.

¹ Contemporaneously with this decision, we are entering an order denying Charles's motion to strike Christine's appellate brief and granting Christine's motion to strike Charles's appellate brief to the extent that he refers—extensively—to matters that are not in the record. In all other respects, we are denying Christine's motion to strike.